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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/844,627 04/27/01 ABBE

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EXAMINER

CASTELL AND S

ART UNIT

PAPER NUMBER

3727

DATE MAILED:

09/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/844,627

Applicant(s)

Abbe

Examiner

Castellano

Group Art Unit

3727

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- Of the above claim(s) 10-12, 18, 21-23, 25 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9, 13-17, 19, 20, 24 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-25 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 3727

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-24, drawn to a food storage unit, classified in class 220, subclass 592.25.
 - II. Claim 25, drawn to a method of use for storing food, classified in class 426, subclass 665.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product can be used in a different process wherein neither food or a label would every have to be placed within the container and the step of writing information about the food never would have to be performed, the container could be used for storing other items such as jewelry or other collectibles.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species of the claimed invention:

Group 1: Fig 1 and 2A; and

Group 2: Fig. 6 and 7.

Art Unit: 3727

If applicant should select Group 1, then one of the following sub-species must be selected:

Group A: Fig. 3;

Group B: Fig. 4;

Group C: Fig. 5.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 appears generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Art Unit: 3727

5. During a telephone conversation with Mr. Robert Morris on September 7, 2001 a provisional election was made with traverse to prosecute the invention of Group I: the product of the food storage unit, claims 1-24, the species of Group 1: Fig 1 and 2A and the sub-species of Group A: Fig. 3, claims 1-9, 13-17, 19, 20 and 24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-12, 18, 21-23 and 25 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

*Change to
w/o traverse
in absence of
traverse*

^{6.1} 6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic as well as the Styrofoam (expanded polystyrene) of claims 7 and 8 and as depicted in the cross section of Fig. 3 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

*Fig 3 discloses a
cross hatching for
glass not a cross-
hatching for plastic*

7. The use of the trademarks STYROFOAM, TUPPERWARE, RUBBER MAID, GLAD and ZIPLOCK has been noted in this application. These trademarks should be capitalized wherever they appear and be accompanied by their generic terminology. "Capitalized" means every letter should be capitalized.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

8. Claim 7 is objected to because of the following informalities: It contains the trademark, STYROFOAM. Appropriate correction is required.

Art Unit: 3727

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 2, 4, 6-9, 13, 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 2 is indefinite because "the at least one hollow channel barrier" further defines the hollow channel already presented in claim 1, it limits it to a region to one side of the barrier as was stated by "limits the depth", wherein the hollow channel before included all the hollow space between the inner and outer walls.

12. Claim 4 is similarly indefinite as claim 2. Claim 4 recites the limitation "said labels" in line 6. There is insufficient antecedent basis for this limitation in the claim. Claim 4 is further indefinite because the scope of the invention can't be determined since the label is functionally recited in claim 1 and claim 4 states a positive recitation of said labels rest upon a surface. If a label is being added to a hollow channel, the channel is no longer hollow.

13. Claim 6 is extremely confusing. Now, the hollow channel includes a label area and an inaccessible portion having insulating material and a hollow channel barrier delimits an area where said insulation material is positioned below the barrier. Is there more than one hollow area? How can Styrofoam (polystyrene) and plastic be placed within the hollow channel and the channel still

Art Unit: 3727

considered hollow, as stated in claims 7 and 8, respectively? How can a support structure be located in a hollow channel, as stated in claim 9? How can a ridge be located in a hollow channel, as stated in claim 16?

14. Claim 7 is further indefinite because it contains the trademark, STYROFOAM. Since the materials covered by a trademark can change and the trademark can't represent only one specific material, use of the trademark makes the claim indefinite. The trademark must be eliminated from the claims, and should be replaced by generic terminology, in this case, expanded polystyrene or polystyrene foam.

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1-6, 9, 13, 14, 16, 17, 19, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Barhite.

Barhite discloses a food storage unit comprising a container having inner and outer walls with a channel therebetween, the bottom wall of the outer container represents a barrier to the channel, a label may be placed within the channel, insulating material (air) is positioned within the channel, a support (28) is placed within the channel. A lid is attached to the container top to seal the container closed, the lid has a ridge (22) that is inserted into the channel. The outermost edge of the lid forms a tab to assist in opening the container. The container may be stacked.

Art Unit: 3727

17. Claims 1-6, 9, 13, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Wooster ('805) (Wooster).

Wooster discloses a food storage unit comprising a container having inner and outer walls with a channel therebetween, walls D and H represent a barrier and a support which separates the channel into two regions, a label may be placed within the upper region and insulating air is contained in both the upper and lower regions. A lid B is attached to the container top to seal the container closed. The container may be stacked.

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 7, 8, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wooster in view of Hepburn and Nelson ('210) (Nelson).

Wooster discloses the invention except for expanded polystyrene in the lower region, the tapered outer wall and the outer wall being a translucent material. Hepburn discloses in Fig. 5 and 6 a cooler wherein the inner and outer walls define a channel therebetween with the insulating expanded polystyrene located in a lower region of the cooler with a label area being formed above the insulation, the outer wall is tapered to be more narrow at the bottom, and the outer wall is a translucent material since it has holes. Nelson discloses a water heater having inner and outer walls with a channel formed therebetween, the channel includes a barrier, a expanded polystyrene

Art Unit: 3727


region above the barrier and a label area below the barrier. It would have been obvious to modify Wooster to include expanded polystyrene in its lower region below the barrier in order to increase the insulation value to prevent foods from spoiling from heat exposure. It would have been obvious to taper the outer wall in order to nest the containers to form a more compact way to store a series of empty containers. It would have been obvious to provide holes in the outer wall to make the container more stable in water so that it can float without tipping over.

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Art Unit: 3727

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703)-308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

September 7, 2001